

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CISCO SYSTEMS, INC.,

Plaintiff-Appellant,

v.

No. 2017-2145

ARISTA NETWORKS, INC.,

Defendant-Appellee.

DOCKETING STATEMENT

This Docketing Statement must be completed by all counsel and filed with the court within 14 days of the date of docketing. When the United States or its officer or agency is a party, this Docketing Statement must be completed by all counsel and filed with the court within 30 days of docketing.

Name of the party you represent: Cisco Systems, Inc. (“Cisco”).

Party is: Appellant.

Tribunal appealed from and Case No.: United States District Court for the Northern District of California, Case No. 5:14-cv-5344-BLF, Judge Beth Labson Freeman.

Date of Judgment/Order:

(1) Judgment, entered December 19, 2016 (ECF No. 750).

(2) Post-judgment Order Denying Motions for Judgment as a Matter of Law and Motion for a New Trial, entered May 10, 2017 (ECF No. 787).

Type of Case: Patent/Copyright.

Relief sought on appeal: Cisco seeks reversal of judgment in favor of Arista on Cisco's copyright infringement claim. Specifically, Cisco seeks reversal of the district court's denial of Cisco's motion for judgment as a matter of law that Arista Networks, Inc. ("Arista") is not entitled to an affirmative defense of scènes à faire that excuses its copyright infringement.

Relief awarded below (if damages, specify): Judgment in favor of Arista, against Cisco, dismissing all claims.

Briefly describe the judgment/order appealed from: After a jury trial in which the jury found that Arista infringed Cisco's copyrighted user interfaces but that this infringement was excused by the affirmative defense of scènes à faire, the district court entered final judgment in favor of Arista on Cisco's claim of copyright infringement. Thereafter, the district court denied Cisco's renewed motion for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b) that the record fails to provide legally sufficient evidence to support Arista's scènes à faire affirmative defense. Cisco appeals from the final judgment and the denial of its renewed motion for judgment as a matter of law.

Nature of judgment: Final judgment and post-judgment order, 28 U.S.C. § 1295(a)(1).

Name and docket number of any related cases pending before this court plus the name of the writing judge if an opinion was issued: None.

Brief statement of the issues to be raised on appeal: Cisco intends to argue that the district court's final judgment and post-judgment order denying Cisco's motion for judgment as a matter of law should be reversed on the ground that the record fails to provide legally sufficient evidence to support Arista's scènes à faire affirmative defense.

Have there been discussions with other parties relating to settlement of this case? Yes.

If "yes," when were the last such discussions? During the pendency of Cisco's cases against Arista.

If "yes," were the settlement discussions mediated? No.

If they were mediated, by whom? N/A

Do you believe that this case may be amenable to mediation? No.

If you answered no, explain why not: Cisco's goal has always been to stop Arista from using Cisco's IP. Prior settlement discussions with respect to Cisco's cases have occurred but have not resulted in settlement, and it is not likely a mediation would advance the parties' discussions.

Provide any other information relevant to the inclusion of this case in the court's mediation program: None.

Dated: June 27, 2017

Respectfully submitted,

By: /s/ Kathleen M. Sullivan
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Attorney for Plaintiff-Appellant

PROOF OF SERVICE

The undersigned hereby certifies that on June 27, 2017, I electronically filed the foregoing DOCKETING STATEMENT with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system. I further certify that I am causing copies of the foregoing to be sent to counsel for Arista at the following email addresses:

akrishnan@keker.com

rvannest@keker.com

bferrall@keker.com

/s/ Kathleen M. Sullivan
Kathleen M. Sullivan